



## ***Help America Vote Act of 2002***

***Independent Self Determination*** – sounds like a powerful phrase doesn't it? Well, it is and the Help America Vote Act is a 160-page piece of legislation that, in effect, provides election officials with the blue print for building an election process nationwide that insures the independence and integrity of elections nationwide. While Election Officials across the nation are well aware of the sweeping impact of this legislation, we are also aware that legislators are often the only ones who are interested in reading 160 pages of legislation. As they say, "Knowledge is Power" and as Colorado's Secretary of State I believe that public education is the key to effecting change. Colorado Statesman intern reporter Zach Zaslow has penned the following excellent explanation of how the Help America Vote Act will affect Colorado voters. Thank you, Zach, for realizing the importance of this project and for your tireless effort to convey its impact. Thanks also to Statesman editor Jodi Strogoff for graciously allowing us to reprint this article as a way to educate Colorado voters on how state and local election officials are working to insure all voters' rights of independent self-determination – ***Donetta Davidson, Colorado Secretary of State***

## **Torrent of Reforms Will Reshape Elections**

***The Help America Vote Act of 2002 and state-level addendums promise significant election reform for Colorado voters***

**By Zach Zaslow**

*The Colorado Statesman*

Within a few years, Colorado voters can expect to see a flurry of innovations in the conduct of elections. Bundles of sophisticated voting equipment will greet them at the polls. Minority and disabled voters will enjoy greater access to the ballot box.

At the same time, elections will be more secure. Citizens will have to prove their identity with a state-issued ID card before voting and document their residence before registering. Mail and absentee voters will have to pass no less stringent scrutiny before their votes are counted, and signatures on all ballots that travel by mail will be analyzed by election judges.

Long before election day, voters will almost certainly experience active education and outreach programs. Every poll worker in every polling place in the state will undergo comprehensive and standardized training. And Colorado will benefit from the efficiency of a unified, computerized statewide registration system.

Passed by Congress last year, the Help America Vote Act of 2002 (HAVA) is being hailed as the most sweeping piece of election reform since the Voting Rights Act of 1965. State-level initiatives mean that Colorado voters will witness even more extensive changes. Yet surprisingly few, outside of a small circle of election officials, are making much of a fuss.

Jack Stansbery, executive director of the Colorado Republican Party, believes that HAVA will have an "important and significant" impact on elections in Colorado. But despite its ground-breaking impact, Stansbery says, "as far as the popular response, it's not really on people's radar screens."

Chris Gates, chairman of the Colorado Democratic Party and president of the National Civic League, agrees that the public is not yet aware of HAVA. "I don't think this is a topic around many dinner tables," he admits.

Yet, public attention or no, Congress has passed the measure into law. Many states, including Colorado, have taken action. More than two dozen have passed legislation to implement the federal act. Some states have enacted election laws that go well beyond HAVA's minimum requirements. In Colorado this year a total of 15 election-related bills were introduced in the state legislature's most recent session, with topics ranging from stepping up penalties for false campaign statements to tweaking local government elections. Eight bills passed into law, including House Bill 1356, the HAVA implementation bill. Of the seven other measures approved by the legislature, the most significant deal with heightened voter identification requirements and changes to provisional and mail balloting.

The provisions in the federal legislation, combined with a number of state-level initiatives, will change the look and feel of elections in Colorado, which in turn could have a noticeable effect on voting results. In short, upcoming elections could be a lot more different — both in their administration and their outcome — than many may now realize.

### **The Impetus for Reform**

After polling-place mishaps in many parts of the nation during the 2000 election — and particularly after the Florida calamity — the American public realized that ballots were not always secure and the right to vote not always inviolable. Worldwide media coverage embarrassed the nation. Election officials, political observers, and both major political parties agreed that the gaps in America's election system left serious room for improvement.

Public outrage is often the impetus for legislative action, and following the 2000 election Congress dutifully promised to take on the issue. A comprehensive solution eventually materialized in H.R. 3295, the Help America Vote Act of 2002.

HAVA reworks the nuts and bolts of federal elections, raising the accuracy and accessibility of voting machines, introducing provisional ballots to states that now lack them, mandating accurate and comprehensive voter registration lists, and tightening security at the polls in an effort to squelch ballot fraud.

Congress has appropriated \$1.5 billion for the changes so far, and a total of over \$3.8 billion should eventually be forthcoming to help states make the law's requirements a reality. A newly-created independent body, the Election Assistance Commission, will coordinate the mass of changes nationwide.

Payments to Colorado will depend on a number of variables, but Secretary of State Donetta Davidson says the state has already received \$5 million and "we can expect \$2.7 million more any day now." She estimates that over the next three years, federal payments to Colorado will total \$45 million. Davidson is charged by law with the monumental task of overseeing all HAVA-related election changes in Colorado.

Under HAVA, the federal government pays 95 percent of the costs of implementation, and each state is responsible for the remaining five percent. To meet the five percent requirement, the Secretary of State may draw from state funds or seek to collect the money from counties, which may donate election equipment as a form of payment. Davidson says she expects that when incidental costs related to compliance are totaled, Colorado will have no trouble meeting the 5 percent requirement.

HAVA specifies that each state establish a special election fund, run by the Secretary of State, for the sole purpose of meeting HAVA requirements. Davidson says she will manage this money centrally, paying bills that counties submit rather than distributing the funds to local jurisdictions.

Federal payments will go toward new equipment, training, and other costs of compliance, but the money also may act as reimbursement for states that, beating Congress to the punch, have spent money on federal election improvements since the 2000 election.

### **What It Means for Colorado**

Voters in every state will see major differences in the conduct of future elections as a result of HAVA. New facets of federal elections will stem from the law's four major goals: to improve voting equipment and technology, streamline the registration and voting process, increase ballot security, and implement and standardize the use of provisional ballots so that no eligible voter is ever again denied the right to vote.

Lesser sections of HAVA stipulate new penalties for interfering with the voting process or for providing false information during registration and voting, and create and fund a project to study the potential for Internet voting in future elections. The bill also specifies that the Election Assistance Commission, in charge of HAVA changes nationwide, may award money to a nonprofit, nonpartisan group that holds mock student and parent elections with the aim of increasing voter education and participation.

### **New Voting Technology**

Of the law's four major objectives, its most fundamental push is to bring the nation's voting machines up to par — with the implicit goal of ensuring that no state, county, or precinct will have to revisit the Florida 2000 nightmare. Nationwide, about \$700 million will go toward replacing obsolescent punch-card and lever voting systems with touch-screen machines. States that are hurting the most for election-related improvements will receive more funds, though every state can expect a minimum of \$5 million for new voting equipment.

In practical terms, HAVA means that by 2004 voting machines in each of the nation's more than 187,000 precincts must be able to prevent a number of common voter errors. The goal is to lessen the chances that a ballot will incorrectly express a voter's wishes.

Voters who select multiple candidates for a single office will be alerted to the consequences of such action before their ballot is submitted. Technology will allow voters to make a selection and then change it, if they so desire, before casting their vote. The new machines must also be able to produce a permanent paper record of every vote cast (to be used in the event of a recount). States that now use paper ballots or lever voting machines needn't discard their current system, but they will have to outfit their old machines with technology that meets the new standards.

HAVA also aims for increased accessibility and participation in voting for persons with disabilities. By 2006, every polling place in the nation must be equipped with at least one handicapped-accessible voting machine. Blind voters will be able to vote without the assistance of another person, and quadriplegic voters will have the ability to cast a ballot. In addition to increasing accessibility for disabled voters, the machines also are capable of providing ballots in Spanish.

Colorado appears to be in a reasonable position to meet the required timetable for updating its voting equipment. Each “integrated voting system,” as the Department of State calls them, will be evaluated according to the new standards. Equipment that fails to pass muster will be replaced with touch-screen machines.

Certain to be swapped out are the punch-style voting machines and other antiquated hardware still mainstays in six Colorado counties. Secretary of State Davidson estimates that all told, Colorado will receive \$2.3 million for replacement of voting machines in 682 precincts across the state.

### **High-tech Voter Registration**

The second major goal of HAVA is to streamline the process of voter registration. To that end, by 2006 states must create and maintain an accurate, up-to-date, and centralized statewide registry of voters. The new system is designed to simplify registration for both officials and voters, and to ensure voters will not be wrongly purged from registration lists.

The creation of this statewide registration system is perhaps the largest obstacle facing Davidson. The required characteristics of the voter database present a tall order: to create “a single, uniform, centralized, interactive, computerized statewide voter registration system,” according to the state’s Legislative Council staff.

Davidson has established a Project Management Office to oversee creation and development of the statewide registration list. Officials are still deciding exactly who will create the database and how they will do it, but the basic framework has been established. Currently, the Secretary of State collects voter registration lists from each county clerk on a monthly basis, and each clerk serves as the storehouse for their respective list. Under the new system, voters still will register with the clerk in their home county, but county clerks will no longer maintain individual registration lists. Instead, each clerk will feed real-time updates into a centralized database managed by the Secretary of State. On election day, any election official will be able access the database to check a voter’s registration.

To ensure the purity of the centralized database, the Secretary of State is responsible for verifying and double-checking a voter’s identity and residence. The Secretary of State will verify voter registration information in the database by cross-checking with data from motor vehicle and other state records. Using this new integrated system, officials will be able to tell almost instantly if a voter is registered in two counties at once, remove voters who have been convicted of a felony, and eliminate duplicate records.

To streamline this cross-checking process each Colorado voter will be assigned a unique voter ID number. Once the system is fully in place, it may ease the workload of election administrators by eliminating the need for reams of data entry. In addition, the presence of a statewide registry should make things like address changes less of a hassle for voters.

### **Tougher Scrutiny of Voters**

Yet some groups contend that HAVA’s third major goal — ballot security — will create more hassles, not less, for certain types of voters on election day. The law’s attention to ballot security means that voters seeking to register must provide a valid driver’s license or the last four digits of their social security number. Voters who register for the first time by mail will be required to show ID at the polls. States also will be more demanding in their scrutiny of a voter’s proof of residence.

Republicans say the increased security is needed to ensure that only eligible voters cast ballots. Democrats contend it is a burden that may discourage minorities and other groups from registering and voting. The measure was even compared to poll taxes by the NAACP, which argued that the cost of obtaining a valid state-issued ID card might discourage poor or elderly would-be voters.

In the future, when Coloradans register to vote they will be asked to provide a Colorado-issued driver’s license number or ID card number, as well as the last four digits of their Social Security Number. Military and overseas citizens are exempt from these ID requirements.

First-time voters will face even more adjustments. Those who register by mail must include a copy of a current and valid photo ID, or a copy of a utility bill that includes their name and current address.

In the face of these changes, the Secretary of State has an interest — indeed, an obligation — to educate voters about the new ID requirements and other changes in Colorado election law. As a result, Colorado voters will see a massive media campaign as election season approaches to remind them not to forget their ID on election day. The state also will benefit from greater education and training for county clerks and election staff.

### **Provisional Balloting Nationwide**

Despite the best efforts of HAVA and the state of Colorado, of course, voting in upcoming elections will not be trouble-free. Some voters will arrive at their polling place only to find they are not included on registration lists. Many less mindful souls will no doubt fail to bring proper ID. Fortunately, under the new law these voters will have a recourse thanks to HAVA's fourth major goal: provisional ballots.

As is already the case in Colorado, by January 1, 2006, any voter in America who arrives at the polls but is unregistered according to state records will be allowed to vote by provisional ballot. Voters who forget ID or encounter other complications may do the same. Provisional ballots will be counted like any other if and when election officials conclude that the provisional voter was a legitimate elector.

Provisional balloting is essentially a catch-all solution to most of the problems that inevitably arise each election day. Quite simply, it holds the promise that no bureaucratic oversight, technical difficulty, or other thorn in the side of free democracy will turn away eligible voters from the polls. Perhaps it was because of the inclusion of this safeguard that most lawmakers were able to agree on some of the more controversial aspects of HAVA. The bill passed Congress by strong margins in both houses: 92-2 in the Senate and 357-48 in the House.

### **Uphill Battle Could Be Worse**

Congress has appropriated less than half of the promised total of \$3.8 billion for HAVA implementation. The rest of the money is purportedly on the way, but the states have good reason to be edgy about an unfunded mandate of this size. The April issue of *State Legislatures*, a publication by the National Conference of State Legislatures, ran an article analyzing HAVA in which it expressed worry that "full funding is far from assured despite a promising up-front investment from Congress." Secretary Davidson also seems concerned about an unfunded mandate, but at the same time she is optimistic that Colorado eventually will get the financial help it needs.

Of course, the money from Congress is conditional on each state demonstrating compliance with HAVA. Meeting the requirements and securing the funding won't be easy — not by a long shot — but Colorado has less reason to worry than a number of other states. Colorado has taken an active interest in voting reform, especially since 2000. Its elections now bear provisional ballots and, in some areas, advanced voting hardware and software. Denver, for example, installed electronic voting machines in 1996, and provisional balloting in Colorado withstood nationwide attention during the tense Feeley-Beauprez contest in 2002.

What has driven Colorado to keep its election infrastructure up-to-date? A variety of influences played a role, but state legislators and the State Department deserve a fair portion of the credit. Secretary of State Davidson states that after the 2000 election, she saw Congress was going to eventually legislate massive changes, and she didn't want them to come as a complete shock to Colorado. Davidson pushed for some of the changes, like provisional balloting, ahead of time. In 2001, she established a Blue Ribbon Task Force to investigate the possibilities for election reform. Its findings were relayed to the General Assembly, which instituted provisional balloting in 2002.

Colorado's election features are neither cutting-edge nor unique to this state, of course. Most states have some form of provisional voting, and New York voters have enjoyed the use of provisional ballots for nearly three decades. But according to [www.electionline.org](http://www.electionline.org), a website that provides comprehensive election reform coverage, 16 states had no form of provisional ballots as of October, 2002. So while Colorado is not leading the nation in terms of election reform, it has kept abreast of recent changes. That will make HAVA compliance — and the associated millions in federal funds — easier to acquire.

In addition, Colorado is one of the 28 states that passed HAVA compliance legislation in 2003, according to the National Conference of State Legislatures. Colorado is also one of only nine states that have already set up a fund to receive federal HAVA money. If the federal money does come through, Colorado has a head start in qualifying for its fair share.

### **More Change for Colorado**

In fact, with legislation passed in 2003, Colorado joins the ranks of states that have chosen to legislate election standards even stricter than those in HAVA. The Help America Vote compliance bill is the General Assembly's major undertaking concerning elections, but is by no means the only such bill.

During the 2003 session, Colorado's state legislature added its own ideas about election reform to HAVA's requirements. Fifteen election-related bills were introduced during the 2003 session. Eight (including the HAVA compliance bill) were sent to the Governor and signed into law. In general, their impact is much more controversial than the broader, more comprehensive dictates of HAVA.

Perhaps the most significant such bill is SB-102. Its voter identification requirements are even more stringent than those in the federal legislation: under HAVA voters must show ID only when registering, but under SB-102, every Colorado voter will have to show a valid photo ID before casting a



ballot. Mail ballots must be accompanied by a photocopied ID card, unless one was included with a voter's registration, and election judges will verify the validity of all mail ballot signatures.

The bill has taken flak from the left, which argues that the ID requirements are an unnecessary burden that may disenfranchise the poor and elderly, groups less likely to have a state-issued ID or money to acquire one. Those on the right fire back that voters may present a variety of state-issued IDs, making it much easier to meet the requirement.

SB-102 also is defended on the grounds that it includes the fail-safe provisional ballot clause. This should enfranchise everyone eligible to vote, regardless of their ability to show or pay for an ID. After a voter casts a provisional ballot, the county clerk will have 12 days to verify the voter's identity and include the ballot in vote totals.

Another important measure passed into law puts a twist on the federal rules concerning provisional ballots. HB-1006 states that voting by provisional ballot is no longer an option (as it was in 2002) for voters who request an absentee ballot but by election day have lost, soiled, or failed to receive it. According to the Bighorn Center for Public Policy, 50 percent of provisional voters in the 2002 general election had already received an absentee ballot. This law, then, could cut in half the number of provisional ballots cast in future elections.

Of the eight election-related bills passed into law, five deal with voter ID requirements and provisional, mail, and absentee balloting. The last three have more diverse goals. They include one measure that requires minor political parties in Colorado to conduct primary elections, one that eliminates the presidential primary election in Colorado, and one that simplifies voting for military and overseas citizens.

The bill dealing with minor political parties, HB-1142, requires minor parties such as the Libertarian Party or the Natural Law Party of Colorado to select candidates in the same way that Democrats and Republicans currently do. Those parties, which used to nominate candidates at statewide conventions, will now bear the increased costs of conducting a primary election. The bill was opposed by Democrats, who argued it was a Republican effort to stifle competition by increasing election expenses for the Libertarian Party of Colorado. Republicans countered that it was merely an attempt to put all political parties in the state on equal footing by eliminating differences in the way that each selects candidates for office.

Also approved was SB-188, which saves the state \$2.2 million by eliminating the primary presidential election, and HB-1271, streamlining the absentee ballot request process for military and overseas voters.

The impact that HAVA will have on the outcomes of Colorado's elections, if any, is unclear. The law has something for both Democrats and Republicans, balancing the perpetual efforts of those on the left to increase voter turnout (often to their gain) with the wishes of those on the right for greater scrutiny of voters (often to their gain).

The new accessibility and voter education programs may skew elections slightly left by increasing turnout among lower-class and minority voters. Or the new security measures may nudge things to the right a bit by discouraging would-be voters. Perhaps the next election will reveal a little of both, but don't expect large swings in either direction. "Ultimately," says Stansbery of the Colorado Republicans, "it's going to come down to candidates and parties doing their part in motivating voters to get to the polls."

### **A Bumpy Road Ahead**

In a conference room in the Secretary of State's office last Thursday (May 9, 2003), two dozen people gathered at a mid-morning public forum to discuss the extensive overhaul of America's election system, and what it held in store for Colorado.

Throughout the 90-minute meeting, the crowd, mostly county clerks and election commissioners, showed both curiosity and concern. At times, the atmosphere was marked by measured optimism as Secretary of State Davidson explained the provisions in HAVA. At others, marked skepticism prevailed. Those in attendance were eager for the array of promised improvements in Colorado elections but uncertain about what the changes would mean and how they would be brought about.

One of the many ambiguities as the planning process moves forward is HAVA's likely impact on local government budgets. There is little reason for optimism. Federal funds transferred to Colorado under HAVA will pay for equipment at polling places and will likely pay for poll worker training. Other costs, however, won't be covered. For example, if county employees have to put in extra hours to set up voting machines, create audio recordings for non-English speakers, or address any number of other aspects of the federal legislation, the local governments themselves will almost certainly have to pick up the slack.

Once the system is fully in place, individual counties may see a lighter workload, but payroll and other expenditures will more than likely increase for at least the next two years. With state and local budgets already drained, HAVA's impact does not bode well for Colorado's fiscal drought, at least in the short term.

Scott Doyle, Larimer County Clerk and Recorder, says that around the state, "clerks are asking, 'Gosh, how do we do all this, and where do we get the money?'" Larimer County, he suggests, is fortunate

to have more flexibility than most counties: “We can react, but we’re one of the more progressive, faster-growing counties.” Doyle worries about the ability of smaller counties to cope with the burden of such extensive changes.

The strains that HAVA will place on individual counties give rise to another potentially serious problem: local cooperation. At the public forum in Denver, Davidson urged the election officials in attendance to do their part in achieving HAVA compliance in Colorado.

“This is not just a federal or a state law,” she said, stressing its importance. “This is a civil rights bill.” The consequences for non-compliance are grave. If even one of Colorado’s 64 counties fails to meet HAVA deadlines, the entire state could lose all federal funding.

Davidson says she is working to mold election officials from around the state into a team that will be held together by consensus and a common interest in successful elections. As a somewhat firmer incentive to comply, the Secretary of State’s office will track local progress closely and try to quickly bring lagging counties back in line. Failing that, Davidson hopes threats of legal action by the Justice Department will motivate any county that drags its feet. Despite all of this, however, the possibility remains that a delinquent local official or two could cost Colorado millions in much-needed funds.

### **Better Voting? Not Just Yet...**

It will take years before the states have sorted out and complied with the torrent of mandates that HAVA has rained down upon America’s election infrastructure. Colorado will make even greater changes as the result of action by the General Assembly. Both parties agree that the new systems are essential, but the logistical difficulties involved are overwhelming.

Secretary of State Davidson has attacked HAVA implementation directly with a preliminary state plan that is largely solid. But the language surrounding her plan is frighteningly vague in places and the immensity of the job is daunting.

By 2006, Colorado can expect cleaner, easier voting. Between now and then, however, the future holds little but a great deal of scrambling, confusion, and strenuous work for election officials at all levels.

Thankfully, not all of the new measures will be fully established between now and the 2004 general election. Things like the new registration system and much of the sophisticated voting equipment will face their first real test in the less busy environment of a non-presidential election two years later.

### **Public Understanding is Key**

The force behind sweeping election reforms originated in the weeks that America’s confidence in public elections faltered during the aftermath of Florida’s 2000 election. The political establishment has accepted HAVA and begun to bring about the changes. But the public will have to do so as well if the effort is to be successful.

For Davidson and other officials around the state, the HAVA deadlines leave Colorado pressed for time — her monumental task must be complete by the last day of 2005. With luck, the voting public won’t also be scrambling to adjust as the changes take effect. New technology at the polls may cause some people serious concern at first, and the public will need both time and active encouragement to gain confidence in the unfamiliar systems and procedures.

Hopefully the public will turn its attention to the new electoral landscape sooner rather than later. Stella Dominguez, Gunnison County Clerk and Recorder, senses that the public is ignorant of HAVA. But, she says, “I’m sure that by next year, with the presidential election,” people will start paying attention. She also expects the press will provide greater coverage of the changes.

But Jan Tyler, Denver Election Commissioner, is not optimistic. “It’s not really sexy reading,” she says.

Detailed analyses of the changes may not appeal to general readership, and a broad overview may skip important details. It is public understanding of those important details — such as when and where voters will need to produce ID — that will determine the success of the program.

Open forums like the one Secretary of State Davidson held last week are a good first step in raising public awareness. Davidson’s planned education campaign to get voters’ attention and bring them up to speed on all the changes will be even more important. And media coverage will be essential.

The coming changes are complex and far-reaching, and more is required than public forums, education campaigns, and media attention. Voters themselves must take an active interest in becoming familiar with the new face of American elections. They will need to learn what modifications have been made to one of their most important constitutional rights — something no legislative body can require. Ultimately, the success of American elections will continue to depend on what it always has: ordinary voting citizens.